

## CHAPTER 36 WATER QUALITY

## SECTION.

- 39-3601 DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT
- 39-3602 DEFINITIONS
- 39-3603 GENERAL WATER QUALITY STANDARD AND ANTIDEGRADATION POLICY
- 39-3604 DESIGNATION OF INSTREAM BENEFICIAL USES
- 39-3605 IDENTIFICATION OF REFERENCE STREAMS OR CONDITIONS
- 39-3605C ENVIRONMENTAL REMEDIATION FUND ESTABLISHED
- 39-3606 USE OF REFERENCE STREAMS OR CONDITIONS TO DETERMINE FULL SUPPORT OF BENEFICIAL USES
- 39-3606C APPROPRIATION OF ENVIRONMENTAL REMEDIATION FUND -- PURPOSE OF CHAPTER
- 39-3607 MONITORING TO DETERMINE SUPPORT OF BENEFICIAL USES
- 39-3608 REGULATORY ACTIONS FOR WATER BODIES WHERE BENEFICIAL USES ARE FULLY SUPPORTED
- 39-3609 IDENTIFICATION OF WATER BODIES WHERE BENEFICIAL USES ARE NOT FULLY SUPPORTED
- 39-3610 GENERAL LIMITATIONS ON POINT AND NONPOINT SOURCES FOR WATER BODIES NOT FULLY SUPPORTING BENEFICIAL USES
- 39-3611 DEVELOPMENT AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOAD OR EQUIVALENT PROCESSES
- 39-3612 INTEGRATION OF TOTAL MAXIMUM DAILY LOAD PROCESSES WITH OTHER PROGRAMS
- 39-3613 CREATION OF BASIN ADVISORY GROUPS
- 39-3614 DUTIES OF THE BASIN ADVISORY GROUP
- 39-3615 CREATION OF WATERSHED ADVISORY GROUPS
- 39-3616 DUTIES OF EACH WATERSHED ADVISORY GROUP
- 39-3617 DESIGNATION OF OUTSTANDING RESOURCE WATERS
- 39-3618 RESTRICTION PROVISIONS FOR NEW NONPOINT SOURCE ACTIVITIES ON OUTSTANDING RESOURCE WATERS
- 39-3619 CONTINUATION PROVISIONS FOR EXISTING ACTIVITIES ON OUTSTANDING RESOURCE WATERS
- 39-3620 APPROVAL PROVISIONS FOR BEST MANAGEMENT PRACTICES FOR NEW NONPOINT SOURCE ACTIVITIES ON OR AFFECTING OUTSTANDING RESOURCE WATERS
- 39-3621 MONITORING PROVISIONS
- 39-3622 ENFORCEMENT PROVISIONS
- 39-3623 EFFECT OF RULES
- 39-3624 DECLARATION OF POLICY -- DESIGNATION OF DIRECTOR
- 39-3625 DEFINITIONS
- 39-3626 AUTHORIZATION OF GRANTS AND LOANS -- DESIGNATION OF ADMINISTERING AGENCY -- RESERVATION OF FUNDS FOR OPERATIONS -- CRITERIA -- PRIORITY PROJECTS -- ELIGIBLE PROJECTS
- 39-3627 PAYMENTS BY STATE BOARD OF ENVIRONMENTAL QUALITY -- CONTRACTS WITH MUNICIPALITIES AND COMMUNITY AND NONPROFIT NONCOMMUNITY PUBLIC WATER SYSTEMS -- RULES -- APPROVAL OF ATTORNEY GENERAL -- AUDIT OF PAYMENTS
- 39-3628 WATER POLLUTION CONTROL FUND ESTABLISHED
- 39-3629 WASTEWATER FACILITY LOAN ACCOUNT ESTABLISHED
- 39-3630 APPROPRIATION OF WATER POLLUTION CONTROL FUND -- PURPOSE OF CHAPTER
- 39-3631 APPROPRIATION OF WASTEWATER FACILITY LOAN FUND -- PURPOSE OF CHAPTER
- 39-3632 GRANTS AND LOANS FOR DESIGN, PLANNING OR CONSTRUCTION -- LIMITS ON AMOUNT OF GRANTS AND LOANS

39-3633 WATER POLLUTION CONTROL BONDS

39-3634-39 [sections on cottage leases, not included here]

**39-3601. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT.** The legislature, recognizing that surface water is one of the state's most valuable natural resources, has approved the adoption of water quality standards and authorized the administrator of the division of environmental quality of the department of health and welfare in accordance with the provisions of this chapter, to implement these standards. In order to maintain and achieve existing and designated beneficial uses and to conform to the expressed intent of congress to control pollution of streams, lakes and other surface waters, the legislature declares that it is the purpose of this act to enhance and preserve the quality and value of the surface water resources of the state of Idaho, and to define the responsibilities of public agencies in the control, and monitoring of water pollution, and, through implementation of this act, enhance the state's economic well-being. In consequence of the benefits resulting to the public health, welfare and economy, it is hereby declared to be the policy of the state of Idaho to protect this natural resource by monitoring and controlling water pollution; to support and aid technical and planning research leading to the control of water pollution, and to provide financial and technical assistance to municipalities, soil conservation districts and other agencies in the control of water pollution. The director, in cooperation with such other agencies as may be appropriate, shall administer this act. It is the intent of the legislature that the state of Idaho fully meet the goals and requirements of the federal clean water act and that the rules promulgated under this act not impose requirements beyond those of the federal clean water act.

**39-3602. DEFINITIONS.** Whenever used or referred to in this act, unless a different meaning clearly appears from the context, the following terms shall have the following meanings

- (1) "Applicable water quality standard" means those water quality standards identified in the rules of the department.
- (2) "Best management practice" means practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.
- (3) "Board" means the board of health and welfare.
- (4) "Department" means the department of health and welfare.
- (5) "Designated agency" means the department of lands for timber harvest activities, for oil and gas exploration and development and for mining activities; the soil conservation commission for grazing activities and for agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the department of health and welfare's division of environmental quality for all other activities.
- (6) "Designated use or designated beneficial use" means those uses assigned to waters as identified in the rules of the department whether or not the uses are being attained. The department may adopt subcategories of a use.
- (7) "Director" means the director of the department of health and welfare, or his or her designee.
- (8) "Discharge" means any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For the purposes of this chapter, discharge shall not include surface water runoff from nonpoint sources or natural soil disturbing events.
- (9) "Existing use" means those surface water uses actually attained on or after November 28, 1975, whether or not they are designated uses. Existing uses may form the basis for subcategories of designated uses.
- (10) "Full protection, full support, or full maintenance of designated beneficial uses of water" means compliance with those levels of water quality

criteria listed in the appropriate rules of the department, or where there is no applicable numerical criteria, compliance with the reference streams or conditions approved by the director in consultation with the appropriate basin advisory group.

(11) "Lower water quality" means a measurable adverse change in a chemical, physical, or biological parameter of water relevant to a designated beneficial use, and which can be expressed numerically. Measurable adverse change is determined by a statistically significant difference between sample means using standard methods for analysis and statistical interpretation appropriate to the parameter. Statistical significance is defined as the ninety-five percent (95%) confidence limit when significance is not otherwise defined for the parameter in standard methods or practices.

(12) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(13) "New nonpoint source activity" means a new nonpoint source activity or a substantially modified existing nonpoint source activity on or adversely affecting an outstanding resource water which includes, but is not limited to, new silvicultural activities, new mining activities and substantial modifications to an existing mining permit or approved plan, new recreational activities and substantial modifications to existing recreational activities, new residential or commercial development that includes soil disturbing activities, new grazing activities and substantial modifications to existing grazing activities, except that reissuance of existing grazing permits, or grazing activities and practices authorized under an existing permit, is not considered a new activity. It does not include naturally occurring events such as floods, landslides, and wildfire including prescribed natural fire.

(14) "Nonpoint source activities" includes grazing, crop production, silviculture, log storage or rafting, construction, mining, recreation, septic systems, runoff from storms and other weather related events and other activities not subject to regulation under the federal national pollutant discharge elimination system. Nonpoint source activities on waters designated as outstanding resource waters do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments.

(15) "Nonpoint source runoff" means water which may carry pollutants from nonpoint source activities into the waters of the state.

(16) "Outstanding resource water" means a high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. It constitutes an outstanding national or state resource that requires protection from point source and nonpoint source activities that may lower water quality.

(17) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(18) "Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition.

(19) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock,

sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged or released to water in excessive quantities cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities.

(20) "Reference stream or condition" means one (1) of the following

(a) The minimum biological, physical and chemical conditions necessary to fully support the designated beneficial uses; or

(b) A water body representing natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin; or

(c) A water body representing minimum conditions necessary to fully support the designated beneficial uses.

In highly mineralized areas or in the absence of such reference streams or water bodies, the director, in consultation with the basin advisory group and the technical advisers to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported.

(21) "Short-term or temporary activity" means an activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the director. Short-term or temporary activities include, but are not limited to, maintenance of existing structures, limited road and trail reconstruction, soil stabilization measures, and habitat enhancement structures.

(22) "Silviculture" means those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber.

(23) "Soil conservation commission" means an agency of state government as created in section 22-2718, Idaho Code.

(24) "Soil conservation district" means an entity of state government as defined in section 22-2717, Idaho Code.

(25) "State" means the state of Idaho.

(26) "State water quality management plan" means the state management plan developed and updated by the department in accordance with sections 205, 208, and 303 of the federal clean water act.

(27) "Total maximum daily load (TMDL)" means a plan for a water body not fully supporting designated beneficial uses and includes the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, and natural background levels of the pollutant impacting the water body. Pollutant allocations established through TMDLs shall be at a level necessary to implement the applicable water quality standards for the identified pollutants with seasonal variations and a margin of safety to account for uncertainty concerning the relationship between the pollutant loading and water quality standards.

(28) "Waters or water body" means all the accumulations of surface water, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through or border upon this state. For the purposes of this chapter, water bodies shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state.

(29) "Water pollution" is such alteration of the thermal, chemical, biological or radioactive properties of any waters of the state, or such

discharge or release of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(30) "Watersheds" means the land area from which water flows into a stream or other body of water which drains the area. For the purposes of this chapter, the area of watersheds shall be recommended by the basin advisory group described in section 39-3613, Idaho Code.

**39-3603. GENERAL WATER QUALITY STANDARD AND ANTIDEGRADATION POLICY.** The existing instream beneficial uses of each water body and the level of water quality necessary to protect those uses shall be maintained and protected. Where the quality of waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of this chapter, and the department's planning processes, along with appropriate planning processes of other agencies, that lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such reductions in water quality, the department shall assure water quality adequate to protect existing uses fully.

**39-3604. DESIGNATION OF INSTREAM BENEFICIAL USES.** For each surface water body, the director shall designate, pursuant to chapter 52, title 67, Idaho Code, and specifically list in the rules of the department, the beneficial use which that water body can reasonably be expected to support without regard to whether that use is fully supported at the time of such designation. In making such designations, the director shall consider the existing use of the water body and such physical, geological, chemical and biological measures as may affect the water body and shall make such designations utilizing fully the public participation provisions set forth in this chapter. Designated uses as set forth in this chapter shall fully support existing uses. Designations of beneficial uses shall be reviewed as necessary and revised when such physical, chemical or biological measures indicate the need to do so. In revising a designated beneficial use, the director shall consider the economic impact of the revision and the economic costs required to fully support the revised designated beneficial use. There shall be no requirement for persons who either conduct nonpoint activities or who conduct operations on waters described in section 39-3609, Idaho Code, pursuant to a national pollution discharge elimination system permit to meet water quality criteria other than those necessary for the full support of the existing beneficial use for the water body pertinent to either the nonpoint activity or point source permit in question, except as provided in section 39-3611, Idaho Code.

**39-3605. IDENTIFICATION OF REFERENCE STREAMS OR CONDITIONS.** The director shall, in a manner consistent with the public participation provisions set forth in this chapter and in accordance with chapter 52, title 67, Idaho Code, identify reference streams or conditions to assist in determining when designated beneficial uses are being fully supported. Streams or conditions shall be selected to represent the land types, land uses and geophysical features of the basins described in this chapter. Reference streams or conditions shall be representative of one (1) of the following

(1) A stream or other water body reflecting natural conditions with few impacts from human activities and which is representative of the highest level of support attainable in the basin; or

(2) A stream or water body reflecting the minimum conditions necessary to

fully support the designated beneficial uses; or

(3) Physical, chemical and biological indicators identified in the rules of the department which reflect full support of designated beneficial uses.

**39-3605C. ENVIRONMENTAL REMEDIATION FUND ESTABLISHED.** There is hereby created in the state treasury a fund to be known as the environmental remediation fund. Surplus moneys in the environmental remediation fund shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury under section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the environmental remediation fund. The fund may have paid into it:

- (1) Legislative appropriations and transfers from other funds;
- (2) All donations and grants from any source which may be used for the provisions of this act;
- (3) Any other funds which may hereafter be provided by law.

**39-3606. USE OF REFERENCE STREAMS OR CONDITIONS TO DETERMINE FULL SUPPORT OF BENEFICIAL USES.** The director, in consultation with the basin advisory group, shall conduct monitoring to determine if designated beneficial uses are fully supported. In making such determination, the director shall compare the physical, chemical and biological measures of the water body in question with the reference stream or condition appropriate to the land type, land uses and geophysical features of the water body in question as described in section 39-3605(2), Idaho Code. If the water body in question has such physical, chemical or biological measures as the reference water body or condition, even though such measures may be diminished from the conditions set forth in section 39-3605(1), Idaho Code, then the director shall deem the designated beneficial uses for the water in question to be fully supported and as having achieved the objectives of the federal clean water act and of this chapter. When site-specific standards have been developed for an activity pursuant to the rules of the department, the use of reference streams as described in this section shall not be necessary.

**39-3606C. APPROPRIATION OF ENVIRONMENTAL REMEDIATION FUND -- PURPOSE OF CHAPTER.** Moneys in the environmental remediation fund may be used for annual legislative appropriations for the purpose of environmental cleanup and remediation and restoration in, but not limited to, the following areas:

- (1) To provide the state's matching share of grants for remediation including superfund grants;
- (2) To provide for the operations of remediation activities.

**39-3607. MONITORING TO DETERMINE SUPPORT OF BENEFICIAL USES.** The director shall conduct a beneficial use attainability and status survey to identify appropriate designated uses and to determine the status of designated beneficial uses in each water body. Measures to determine appropriate designated uses and the status of designated beneficial uses shall include appropriate water quality standards as identified in the rules of the department in conjunction with biological or aquatic habitat measures that may include, but are not limited to: stream width, stream depth, stream shade, sediment, bank stability, water flows, physical characteristics of the stream that affect habitat for fish, macroinvertebrate species or other aquatic life, and the variety and number of fish or other aquatic life.

Previous assessments of beneficial use attainability and status which are of a quality and content acceptable to the director shall constitute the baseline data against which future assessments shall be made to determine changes in the water body and what beneficial uses can be attained in it. In addition, the director, to the extent possible, may determine whether

changes in the condition of the water body are the result of past or ongoing point or nonpoint source activities. The director shall also seek information from appropriate public agencies regarding land uses and geological or other information for the watershed which may affect water quality and the ability of the water body in question to fully support or attain designated beneficial uses. In carrying out the provisions of this section, the director may contract with private enterprises or public agencies to provide the desired data.

**39-3608. REGULATORY ACTIONS FOR WATER BODIES WHERE BENEFICIAL USES ARE FULLY SUPPORTED.** For streams or other water bodies where the director has determined that designated beneficial uses are being fully supported, the director shall assure, in a manner consistent with other existing applicable statutes, and rules, that all programs deemed necessary to maintain full support of designated beneficial uses are employed. In providing such assurances, the director may enter together into an agreement with public agencies in accordance with sections 67-2326 through 67-2333, Idaho Code.

**39-3609. IDENTIFICATION OF WATER BODIES WHERE BENEFICIAL USES ARE NOT FULLY SUPPORTED.** In accordance with the provisions set forth in the federal clean water act and the public participation provisions set forth in this chapter, the director shall notify the appropriate public agencies of any water bodies in which the designated beneficial uses are not fully supported. For water bodies so identified, the director shall place such water bodies into one (1) of the following priority classifications for the development of total maximum daily load or equivalent processes

(1) "High," wherein definitive and generally accepted water quality data indicate that unless remedial actions are taken in the near term there will be significant risk to designated or existing beneficial uses of a particular water body. The director in establishing this category, shall consider public involvement as set forth in this chapter.

(2) "Medium," wherein water quality data indicate that unless remedial actions are taken there will be risks to designated or existing beneficial uses.

(3) "Low," wherein limited or subjective water quality data indicate designated uses are not fully supported, but that risks to human health, aquatic life, or the recreational, economic or aesthetic importance of a particular water body are minimal.

**39-3610. GENERAL LIMITATIONS ON POINT AND NONPOINT SOURCES FOR WATER BODIES NOT FULLY SUPPORTING BENEFICIAL USES.** The director shall assure, in a manner consistent with existing statutes or rules, that for each category of water body, as described in section 39-3609(1) through (3), Idaho Code, the following limitations shall apply:

(1) For waters in the "high," category a total maximum daily load or equivalent process as described in this chapter shall be undertaken. Provided however, that nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis.

(2) For waters in the "medium" category, such changes in permitted discharges from point sources on the water body or to the best management practices for nonpoint sources within the watershed deemed necessary to prohibit further impairment of the designated or existing beneficial uses.

(3) For waters in the "low" category, such changes in permitted discharges from point sources on the water body or to the best management practices for nonpoint sources within the watershed deemed necessary to prohibit further impairment of the designated or existing beneficial uses.



**39-3611. DEVELOPMENT AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOAD OR EQUIVALENT PROCESSES.** (1) For water bodies described in section 39-3609, Idaho Code, the director shall, in accordance with the priorities set forth in section 39-3610, Idaho Code, and in accordance with sections 39-3614 and 39-3616, Idaho Code, and as required by the federal clean water act, develop a total maximum daily load to control point source and nonpoint sources of pollution on the water body.

(2) Upon the completion of a total maximum daily load, the director shall publish notice of the final decision on the TMDL in the Idaho administrative bulletin and provide written notice to members of the applicable watershed advisory group. The director's final decision shall be based upon a record that provides the basis for the total maximum daily load. The rulemaking provisions in sections 67-5220 through 67-5231, Idaho Code, shall not apply to TMDLs. The director's final decision regarding a TMDL may be appealed to the board of environmental quality in accordance with section 39-107(5), Idaho Code, and the rules governing such appeals. The time for appeal to the board shall commence upon publication in the administrative bulletin. The board's final decision is subject to judicial review under section 39-107(6), Idaho Code. The provisions of this subsection shall apply to all total maximum daily loads developed by the director after January 1, 1995. Provided however, that the rulemaking provisions in sections 67-5220 through 67-5231, Idaho Code, shall apply to TMDLs for metals in the Coeur d'Alene River Basin, upstream from the head of the Spokane River. Provided further, that nothing herein shall modify the requirement that water quality standards be promulgated as rules of the department pursuant to title 67, chapter 52, Idaho Code.

(3) For water bodies where an applicable water quality standard has not been attained due to impacts that occurred prior to 1972, no further restrictions under a total maximum daily load process shall be placed on a point source discharge unless the point source contribution of a pollutant exceeds twenty-five percent (25%) of the total load for that pollutant. Existing uses shall be maintained on all such water bodies.

(4) Total maximum daily load processes developed pursuant to this section shall include, but not be limited to:

- (a) Identification of pollutant(s) impacting the water body;
- (b) An inventory of all point and nonpoint sources of the identified pollutant, if practical, or an analysis of the land types, land uses and geographical features within the watershed that may be contributing identified pollutants to the water body;
- (c) An analysis of why current control strategies are not effective in assuring full support of designated beneficial uses;
- (d) A plan to monitor and evaluate progress toward water quality progress and to ascertain when designated beneficial uses will be fully supported;
- (e) Pollution control strategies for both point sources and nonpoint sources for reducing those sources of pollution;
- (f) Identification of the period of time necessary to achieve full support of designated beneficial uses; and
- (g) An adequate margin of safety to account for uncertainty.

(5) Point source discharges for which a national pollutant discharge elimination system permit is approved after January 1, 1995, shall be deemed to have met the requirements of this section.

**39-3612. INTEGRATION OF TOTAL MAXIMUM DAILY LOAD PROCESSES WITH OTHER PROGRAMS.** Upon completion of total maximum daily load processes as set forth in section 39-3611, Idaho Code, the director shall integrate such processes into the state's water quality management plan developed pursuant to the federal clean water act. Total maximum daily load processes shall be used by all designated agencies for achieving water quality standards.

**39-3613. CREATION OF BASIN ADVISORY GROUPS.** (1) The director, in consultation with the designated agencies, shall name, for each of the state's major river basins, no less than one (1) basin advisory group which shall generally advise the director on water quality objectives for each basin and work in a cooperative manner with the director to achieve these objectives. Each such group shall establish by majority vote, operating procedures to guide the work of the group. Members shall be compensated pursuant to section 59-509(c), Idaho Code. The membership of each basin advisory group shall be representative of the industries and interests directly affected by the implementation of water quality programs within the basin and each member of the group shall either reside within the basin or represent persons with a real property interest within the basin. Recognized groups representing those industries or interests in the basin may nominate members of the group to the director. Each basin advisory group named by the director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include a representative from each of the following agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. In addition, the director shall name one (1) person to represent the public at large who may reside outside the basin. Members named to the basin advisory groups shall, in the opinion of the director, have demonstrated interest or expertise which will be of benefit to the work of the basin advisory group. The director may also name as may be needed those who have expertise necessary to assist in the work of the basin advisory group who shall serve as technical nonvoting advisers to the basin advisory group.

**39-3614. DUTIES OF THE BASIN ADVISORY GROUP.** Each basin advisory group shall meet as necessary to conduct the group's business and to provide general coordination of the water quality programs of all public agencies pertinent to each basin. Duties of the basin advisory groups shall include, but not be limited to, providing advice to the director for:

- (1) Determining priorities for monitoring;
  - (2) Revisions in the beneficial uses designated for each stream and the status and attainability of designated or existing beneficial uses for the water bodies within the basin;
  - (3) Assigning water bodies to the categories described in section 39-3609, Idaho Code;
  - (4) Reviewing the development and implementation of total maximum daily load processes as described in section 39-3611, Idaho Code;
  - (5) Suggesting members of the watershed advisory groups described in section 39-3615, Idaho Code; and
  - (6) Establishing priorities for water quality programs within the basin based on the economic resources available to implement such programs.
- In carrying out the provisions of this chapter, the director and the basin advisory groups shall employ all means of public involvement deemed necessary, including the public involvement required by section 39-3603, Idaho Code, or required in chapter 52, title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies.

**39-3615. CREATION OF WATERSHED ADVISORY GROUPS.** The director, with the advice of the appropriate basin advisory group, may name watershed advisory groups which will generally advise the department on the development and implementation of TMDLs and other state water quality plans, including those specific actions needed to control point and nonpoint sources of pollution

within the watersheds of those water bodies where designated beneficial uses are not fully supported. Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it. Members of each watershed advisory group shall serve and shall not be reimbursed for their expenses during their term of service.

**39-3616. DUTIES OF EACH WATERSHED ADVISORY GROUP.** Each watershed advisory group shall generally be responsible for recommending those specific actions needed to control point and nonpoint sources of pollution within the watershed so that, within reasonable periods of time, designated beneficial uses are fully supported and other state water quality plans are achieved. Watershed advisory groups shall, as described in this chapter, develop and recommend actions needed to effectively control sources of pollution. In carrying out the provisions of this section, the director and the watershed advisory groups shall employ all means of public involvement deemed necessary or required in chapter 52, title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies.

**39-3617. DESIGNATION OF OUTSTANDING RESOURCE WATERS.** Any person may request, in writing to the board of health and welfare, that a stream segment may be considered for designation as an outstanding resource water. The board shall recommend to the legislature those stream segments the board proposes for designation as outstanding resource waters. The legislature shall determine by law which such stream segments to designate as outstanding resource waters. Stream segments so designated shall be included in a list of outstanding resource waters to be compiled and updated by the department of health and welfare in its rules governing water quality standards. Interim status or special protection shall not be provided to streams recommended by the board prior to legislative designation as an outstanding resource water. No state agency shall delay actions, or deny or delay the processing or approval of any permit for a nonpoint source activity based on nomination of a segment for designation as an outstanding resource water, or while the legislature is considering such designation.

**39-3618. RESTRICTION PROVISIONS FOR NEW NONPOINT SOURCE ACTIVITIES ON OUTSTANDING RESOURCE WATERS.** No person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of an outstanding resource water, except for short-term or temporary nonpoint source activities which do not alter the essential character or special uses of a segment, issuance of water rights permits or licenses, allocation of water rights, or operation of water diversions or impoundments.

**39-3619. CONTINUATION PROVISIONS FOR EXISTING ACTIVITIES ON OUTSTANDING RESOURCE WATERS.** Existing activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an outstanding resource water. The provisions of this section shall not affect short-term or temporary activities that do not alter the essential character or special uses of a segment, allocation of water rights, or operations of water diversions or impoundments, provided that such activities shall be conducted in conformance with applicable laws and regulations.

**39-3620. APPROVAL PROVISIONS FOR BEST MANAGEMENT PRACTICES FOR NEW NONPOINT SOURCE ACTIVITIES ON OR AFFECTING OUTSTANDING RESOURCE WATERS.** No

person may conduct a new nonpoint source activity on or affecting an outstanding resource water, except for a short-term or temporary activity as set forth in section 39-3602, Idaho Code, prior to approval by the designated agency as provided in this section.

(1) Within six (6) months of designation of an outstanding resource water by the legislature, the designated agency shall develop best management practices for reasonably foreseeable new nonpoint source activities. In developing best management practices the designated agencies shall

(a) Solicit technical advice from state and federal agencies, research institutions, and universities and consult with affected landowners, land managers, operators, and the public; and

(b) Shall assure that all public participation processes required by law have been completed, but if no public participation process is required by law, will require public notification and the opportunity to comment;

(c) Recommend proposed best management practices to the board of health and welfare.

(2) The board of health and welfare and designated agencies shall adopt the proposed best management practices that are in compliance with the rules and regulations governing water quality standards, and based on the recommendations of the designated agency and the comments received during the public participation process;

(3) After adoption, these best management practices will be known as the outstanding resource water best management practices and will be published by the designated agency. Outstanding resource water approved best management practices will be reviewed and revised where needed by the designated agency every four (4) years in consultation with the department, landowners, federal managers, operators and the public to determine conformance with objectives of this act;

(4) Following adoption of best management practices, the designated agency shall require implementation of applicable outstanding resource water best management practices which will assure that water quality of an outstanding resource water is not lowered;

(5) Where outstanding resource water best management practices have not been adopted as set forth in subsections (1) through (4) of this section, the designated agency shall

(a) Assure that all public participation processes required by law have been completed, but if no public participation process is required by law, the designated agency shall provide for public notification of the new activity and the opportunity to comment;

(b) Determine that the site-specific best management practices selected for a new nonpoint source activity are designed to ensure that water quality of the outstanding resource water is not lowered; and

(c) Provide for review by the department that the activity is in compliance with rules and regulations governing water quality standards.

(6) When the applicable outstanding resource water best management practices are applied, the landowner, land manager, or operator applying those practices will be in compliance with the provisions of this act. In the event water quality is lowered, the outstanding resource water best management practices will be revised within a time frame established by the designated agency to ensure water quality is restored.

**39-3621. MONITORING PROVISIONS.** The designated agencies, in cooperation with the appropriate land management agency and the department shall ensure best management practices are monitored for their effect on water quality. The monitoring results shall be presented to the department on a schedule agreed to between the designated agency and the department.

**39-3622. ENFORCEMENT PROVISIONS.** (1) The designated agency shall ensure that

the approved outstanding resource water best management practices are implemented for new nonpoint source activities. If a person fails to obtain approval from a designated agency for a new nonpoint source activity as set forth in section 39-3620, Idaho Code, or if a person fails to implement approved best management practices and water quality is lowered, the designated agency may institute a civil action for an immediate injunction to halt the activity or pursue other remedies provided by law.

(2) Nothing in this act shall restrict the enforcement authority of the department or designated agencies as provided by law.

**39-3623. EFFECT OF RULES.** Every rule promulgated within the authority conferred in sections 39-3617 through 39-3622, Idaho Code, shall be of temporary effect and shall become permanent only by enactment of statute at the first regular session following adoption of the rule. Rules not approved in the above manner shall be rejected, null, void and of no force and effect on July 1, following submission of the rules to the legislature. The rules promulgated within the authority conferred in this act and adopted by the board of health and welfare on January 31, 1990, and contained in IDAPA 16.01.2003,31 and 16.01.2003,32 and 16.01.2053,01 through 16.01.2053,07, are hereby approved by the legislature.

**39-3624. DECLARATION OF POLICY -- DESIGNATION OF DIRECTOR.** The legislature, recognizing that water is one (1) of the state's most valuable natural resources, has adopted water quality standards and authorized the director of the department of health and welfare to implement these standards. In order to provide and maintain maximum water quality in the state for domestic, industrial, agricultural (irrigation and stockwatering), mining, manufacturing, electric power generation, municipal, fish culture, artificial ground water recharge, transportation and recreational purposes at the earliest possible date, and to conform to the expressed intent of congress to abate pollution of ground waters, streams and lakes, the legislature declares the purpose of this act is to enhance and preserve the quality and value of the water resources of the state of Idaho and to assist in the prevention, control, abatement and monitoring of water pollution. In consequence of the benefits resulting to the public health, welfare and economy it is hereby declared to be the policy of the state of Idaho to protect this natural resource by assisting in monitoring, preventing and controlling water pollution; to support and aid technical and planning research leading to the prevention and control of water pollution, and to provide financial and technical assistance to municipalities and other agencies in the abatement and prevention of water pollution. The director of the department of health and welfare shall administer this act and nothing herein shall be construed as impairing or in any manner affecting the statutory authority or jurisdiction of municipalities in providing domestic water, sewage collection and treatment.

**39-3625. DEFINITIONS.** (1) "Sewage treatment works" means any facility for the purpose of collecting, treating, neutralizing or stabilizing sewage or industrial wastes of a liquid nature, including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

(2) "Community water system" means a public drinking water system that serves at least fifteen (15) service connections used by year-round residents or serves at least twenty-five (25) year-round residents.

(3) "Nonprofit noncommunity water system" means a public drinking water system that is not a community water system and is governed by section 501 of the Internal Revenue Code and includes, but is not limited to: state agencies,

municipalities and nonprofit organizations such as churches and schools.

(4) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works or best management practices, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, and the inspection and supervision of the construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices.

(5) "Eligible construction project" means a project for construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or for a project for the application of best management practices as set forth in the approved state water quality plan, in related project areas:

(a) For which approval of the Idaho board of environmental quality is required under section 39-118, Idaho Code;

(b) Which is, in the judgment of the Idaho board of environmental quality, eligible for water pollution abatement assistance or for provision of safe drinking water, whether or not federal funds are then available therefor;

(c) Which conforms with applicable rules of the Idaho board of environmental quality;

(d) Which is, in the judgment of the Idaho board of environmental quality, necessary for the accomplishment of the state's policy of water purity as stated in section 39-3601, Idaho Code; and

(e) Which is needed, in the judgment of the Idaho board of environmental quality, to correct existing water pollution problems or public health hazards and to provide reasonable reserve capacity to prevent future water pollution problems or public health hazards or to provide for safe drinking water.

(6) "Municipality" means any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.

(7) "Board" means the Idaho board of environmental quality.

(8) "Department" means the Idaho department of environmental quality.

(9) "Director" means the director of the Idaho department of environmental quality.

(10) "Nondomestic wastewater" means wastewater whose source of contamination is not principally human excreta.

(11) "Best management practice" means practices, techniques or measures identified in the state water quality plan which are determined to be the most effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(12) "Nonpoint source pollution" means water pollution that comes from many varied, nonspecific and diffused sources and can be categorized by the general land disturbing activity that causes the pollution.

(13) "Training program" means any course of training established to provide sewage treatment plant operating personnel and public drinking water system personnel with increased knowledge to improve their ability to operate and maintain sewage treatment works and public drinking water systems.

**39-3626. AUTHORIZATION OF GRANTS AND LOANS -- DESIGNATION OF ADMINISTERING AGENCY -- RESERVATION OF FUNDS FOR OPERATIONS -- CRITERIA -- PRIORITY PROJECTS -- ELIGIBLE PROJECTS.**

(1) The state of Idaho is hereby authorized to make grants and loans at or below market interest rates, as funds are available, to any municipality to assist said municipality in the construction of sewage treatment works, to community public water systems and nonprofit noncommunity public water systems. The state of Idaho is hereby also authorized to make loans at or below market interest rates for the implementation of a management program established under section 319 of the federal water pollution control act, as amended.

(2) The department of environmental quality may use a portion of the interest revenues from wastewater and drinking water loans, in an amount not to exceed one percent (1%) of loans outstanding, subject to annual appropriation, for operation of the wastewater and drinking water loan programs.

(3) The Idaho board of environmental quality through the department of environmental quality shall be the agency for administration of funds authorized for grants or loans under this chapter, and may reserve up to four percent (4%) of the moneys accruing annually to the water pollution control and wastewater facility loan funds to be appropriated annually for the purpose of operating the water quality programs established pursuant to this chapter. The board may also reserve up to six percent (6%) of the moneys accruing annually to the water pollution control fund to be appropriated annually for the purpose of conducting water quality studies including monitoring.

(4) In allocating state construction grants and loans under this chapter, the Idaho board of environmental quality shall give consideration to water pollution control needs, protection of public health and provision of safe drinking water.

(5) Pursuant to subsection (4) of this section, the Idaho board of environmental quality shall establish an integrated list of priority municipal sewage facility and nonpoint source pollution control projects and a list of priority community and nonprofit noncommunity public water systems.

**39-3627. PAYMENTS BY STATE BOARD OF ENVIRONMENTAL QUALITY -- CONTRACTS WITH MUNICIPALITIES AND COMMUNITY AND NONPROFIT NONCOMMUNITY PUBLIC WATER SYSTEMS -- RULES -- APPROVAL OF ATTORNEY GENERAL -- AUDIT OF PAYMENTS.**

(1) The Idaho board of environmental quality may make payments not to exceed ninety percent (90%) of the estimated reasonable cost of an eligible construction project funded by a grant. Payments may be made which are equal to one hundred percent (100%) of the estimated reasonable cost of an eligible construction project funded by a loan.

(2) The Idaho board of environmental quality may, in the name of the state of Idaho, enter into contracts with municipalities and community and nonprofit noncommunity public water systems and any such municipality and community and nonprofit noncommunity public water system may enter into a contract with the Idaho board of environmental quality, concerning eligible construction projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

(a) An estimate of the reasonable cost of the project as determined by the Idaho board of environmental quality.

(b) An agreement by the municipality or community and nonprofit noncommunity public drinking water system, binding for the actual service life of the sewage treatment works or the actual service life of the community and nonprofit noncommunity public drinking water system: (

(i) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to section 39-118, Idaho

Code.

(ii) To commence operation of the sewage treatment works or community and nonprofit noncommunity public drinking water system on completion of the project, and not to discontinue operation or dispose of the sewage treatment works or community and nonprofit noncommunity public drinking water system without the approval of the board of environmental quality.

(iii) To operate and maintain the sewage treatment works or community and nonprofit noncommunity public drinking water system in accordance with applicable provisions and rules of the board.

(iv) To make available on an equitable basis the services of the sewage treatment works or community and nonprofit noncommunity public drinking water system to the residents and commercial and industrial establishments of areas it was designed to serve.

(v) To provide for the payment of the municipality's share or the community and nonprofit noncommunity public drinking water system's share of the cost of the project when the project is built using grant funds.

(vi) To develop and to secure the approval of the department of plans for the operation and maintenance of the sewage treatment works or community and nonprofit noncommunity public drinking water system; and of plans and programs for the recovery of the capital costs and operating expenses of the works or system.

(vii) To allow the board to make loans of up to one hundred percent (100%) and supplemental grants based upon financial capability to a municipality for the estimated reasonable cost of an eligible project, which may include treatment of nondomestic wastewater.

(viii) To provide for the accumulation of funds through the use of taxing powers, through charges made for services, through revenue bonds, or otherwise, for the purposes of: (1) capital replacement, (2) future improvement, betterment, and extension of such works occasioned by increased wastewater loadings on the works, and (3) establishing a fund dedicated solely to repayment of principal and interest of loans made subsequent to this chapter.

(ix) To commence annual principal and interest payments not later than one (1) year from the date construction is completed and to provide for full amortization of loans not later than twenty (20) years from the date project construction is completed.

(c) The terms under which the Idaho board of environmental quality may unilaterally terminate the contract and/or seek repayment from the municipality or community and nonprofit noncommunity public drinking water system of sums already paid pursuant to the contract for noncompliance by the municipality with the terms and conditions of the contract and the provisions of this chapter.

(3) The board of environmental quality may, in the name of the state of Idaho, enter into loan contracts with applicants for the implementation of nonpoint source pollution control programs. To be eligible for a loan the project proposed by an applicant must be consistent with the state nonpoint source management plan. Up to five percent (5%) of the total state revolving loan fund may be used for nonpoint source pollution control projects which demonstrate a benefit/nexus to a municipality. (4) The board may adopt rules necessary for the making and enforcing of contracts hereunder and establishing procedures to be followed in applying for state construction grants or loans or training grants herein authorized as shall be necessary for the effective administration of the grants and loans program. (5) All contracts entered into pursuant to this section shall be subject to approval by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the director.



**39-3628. WATER POLLUTION CONTROL FUND ESTABLISHED.** There is hereby created and established in the state treasury a separate fund to be known as the water pollution control fund. The fund shall have paid into it:

1. The moneys provided for in section 63-3638, Idaho Code, that are paid over to the state treasurer shall be deposited to the credit of the water pollution control fund, and not to the credit of the state general fund;
2. All donations and grants from any source which may be used for the provisions of this act;
3. Any other funds which may hereafter be provided by law.

**39-3629. WASTEWATER FACILITY LOAN ACCOUNT ESTABLISHED.** There is hereby created and established in the agency asset fund in the state treasury an account to be known as the wastewater facility loan account. Surplus moneys in the wastewater facility loan account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury under section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the wastewater facility loan account. The account shall have paid into it:

1. Federal funds which are received by the state to provide for wastewater facility loans together with required state matching funds coming from a portion of the moneys in the water pollution control account as established in section 39-3628, Idaho Code;
2. All donations and grants from any source which may be used for the provisions of this section;
3. All principal and interest repayments of loans made pursuant to this chapter; and
4. Any other moneys which may hereafter be provided by law.

**39-3630. APPROPRIATION OF WATER POLLUTION CONTROL FUND -- PURPOSE OF CHAPTER.** Moneys in the water pollution control fund are hereby perpetually appropriated for the following purposes:

(1) To provide revenue for the payment of general obligation bonds issued pursuant to section 39-3633, Idaho Code, and general obligation refunding bonds issued pursuant to chapter 115, 1973 laws of the state of Idaho.

(2) To provide payments for contracts entered into pursuant to this chapter.

(3) To provide funds to capitalize the wastewater facility loan account established in section 39-3629, Idaho Code, including the required matching share of federal capitalization funds.

(4) To provide funds to capitalize the drinking water loan account established in section 39-7602, Idaho Code, including the required matching share of federal capitalization funds.

(5) Pending such expenditure or use, surplus moneys in the water pollution control fund shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the water pollution control fund.

**39-3631. APPROPRIATION OF WASTEWATER FACILITY LOAN FUND -- PURPOSE OF CHAPTER.** Moneys in the wastewater facility loan fund are hereby perpetually appropriated for the following purposes:

(1) To provide loans and other forms of financial assistance authorized under title VI of the federal water quality act of 1987, P.L. 100-4, to any

municipality for construction of sewage treatment works.

(2) To provide funds, subject to annual federal and state appropriation and applicable federal limitations, for operation of the wastewater facility loan program by the department of environmental quality.

**39-3632. GRANTS AND LOANS FOR DESIGN, PLANNING OR CONSTRUCTION -- LIMITS ON AMOUNT OF GRANTS AND LOANS.**

(1) The board of environmental quality may divide financial assistance for eligible construction projects into separate grants, loans or a combination of grants and loans for the design, planning, and construction stages of project development. The making of a grant or loan for early stages of a project does not obligate the state to make a grant or loans for later stages of the same project.

(2) The board may make grants from the water pollution control fund; provided, that the projected payments for such grants would not cause the projected balance in the fund to fall below zero at any time. All grant payments shall be subject to the availability of moneys in the fund.

(3) The board may make loans from the wastewater facility loan fund, provided that the projected payments for such loans would not cause the projected balance in the fund to fall below zero at any time. All loan payments shall be subject to the availability of moneys in the fund.

**39-3633. WATER POLLUTION CONTROL BONDS.** (1) Water pollution control bonds, as provided by section 5, article VIII of the constitution of the state of Idaho, shall be authorized by resolution of the state board of environmental quality. The bonds may be issued in one (1) or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times, may mature in such amount or amounts, may bear interest at the most advantageous rate or rates available to the state at the time offered, payable semiannually, may be in such form, either coupon or registered, may carry such registration and such conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without premium, as such resolution or other resolutions may provide. The bonds, if sold to a federal agency, may be sold at a private sale at not less than par and accrued interest, without advertising the same at competitive bidding. If not sold to a federal agency, the bonds shall be sold publicly in a manner to be provided by the state board of environmental quality. The bonds shall be fully negotiable within the meaning and for all purposes of the Uniform Commercial Code.

(2) The moneys derived from the sale of any bonds shall be deposited in the state treasury to the credit of the water pollution control fund for the purposes of that fund.

(3) All bonds issued pursuant to this chapter shall be obligations of the state and shall be payable in accordance with the terms of this chapter and the provisions of section 5, article VIII of the constitution of the state of Idaho.

The Idaho Code is made available on the Internet by the Idaho Legislature as a public service. This Internet version of the Idaho Code may not be used for commercial purposes, nor may this database be published or repackaged for commercial sale without express written permission.

*The Idaho Code is the property of the state of Idaho, and is copyrighted by Idaho law, I.C. 9-350. According to Idaho law, any person who reproduces or distributes the Idaho Code for commercial*

*purposes in violation of the provisions of this statute shall be deemed to be an infringer of the state of Idaho's copyright.*